

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

DECISION AND ORDER
13-CR-128

DAVID ALLEN VICKERS,

Defendant.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. §636(b)(1) for supervision of pretrial proceedings. On January 28, 2014, Magistrate Judge Schroeder filed a Report, Recommendation and Order recommending that defendant Vickers' motions to dismiss the Indictment on vagueness and statute of limitations grounds be denied. (Dkt. No. 24) Defendant filed objections, the Government filed a response, and the Court heard oral argument on April 10, 2014. On May 8, 2014, the Court issued an Order adopting the Magistrate Judge's findings in their entirety, and denying defendant's motions to dismiss the Indictment. (Dkt. No. 34)

On November 5, 2014, a Second Superseding Indictment was filed in this matter, charging defendant with two counts of transportation of a minor with intent to engage in criminal sexual activity in violation of Title 18, United States Code, Section 2423(a). On November 13, 2014, defendant filed a motion to dismiss the

Second Superseding Indictment on statute of limitations grounds.¹ (Dkt. No. 57) Defendant made essentially the same arguments that were raised in his prior motion to dismiss the Indictment. On December 11, 2014, Magistrate Judge Schroeder issued a Report, Recommendation and Order recommending denial of defendant's motion to dismiss the Second Superseding Indictment, for the same reasons as cited in his previous Report and Recommendation. (Dkt. No. 59)

Defendant filed objections to the Report and Recommendation (Dkt. No. 60), the Government filed a response (Dkt. No. 61), and defendant filed a reply (Dkt. No. 64). The Court heard oral argument on January 26, 2015, at which time the matter was deemed submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon *de novo* review, and after reviewing the submissions of the parties, the prior Report and Recommendation in this matter, and hearing oral argument, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's December 11, 2014 Report and Recommendation, as well as for the reasons stated in his previous Report and Recommendation addressing this same issue

¹ Defendant was arraigned on the Second Superseding Indictment by Magistrate Judge Schroeder on November 14, 2014.

(Dkt. No. 24), defendant's motion to dismiss the Second Superseding Indictment is denied in all respects.

Jury selection in this matter is scheduled to begin on February 17, 2015 at 9:30 a.m.

SO ORDERED.

Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: February 3, 2015